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10/022,649	12/17/2001	Francis D. Palazzo	60136.0136US01	1815
94140 7590 05/27/2010 Merchant & Gould - Cox PO Box 2903 Minneapolis, MN 55402				
EXAMINER				
SALCT, JASON P				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Continuation of Item 11 from Advisory

Applicant argues that Fries fails to suggest promotional metadata file associated with the broadcast audio and video content. The Examiner respectfully disagrees.

The Examiner notes that the claim limitation "associated" is broad and does not suggest how the broadcast audio and video content are related to the promotional metadata file. A broadest reasonable interpretation of this limitation would include that the promotional metafile file being associated with the broadcast audio and video content by the fact that all of the data is transmitted together to the viewer (**see Column 6, Lines 1-15**). The Examiner further notes Column 7, Lines 34-47 for the viewer watching ESPN and further receiving a promotional metadata page for further information regarding the ESPN channel the viewer is currently watching, therefore teaching that the promotional metadata file (**the information service page**) is associated with the broadcast audio and video content.

Applicant also argues that Fries also fails to disclose presenting to the user the promotion type that includes a selection option for the user to store the promotion type on a user-defined storage device during presentation of the promotion type.

The Examiner notes that Tomsen is used to teach these limitations (**see Examiner's rebuttal below**).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections

are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that Tomsen's promotional type or metadata is not associated with the broadcast audio and video content and that the advertisement and the program are decoupled. The Examiner respectfully disagrees.

Figure 5 shows that the broadcast audio and video content is a shoe commercial and the promotional type or metadata ("**Buy Now**" or "**Buy Later**" options (*which are also taught in Columns 13 and 14 of Fries*)) are associated with one another. The Examiner notes that even if the claim limitations recited that the promotional type and the broadcast audio and video content were contextually related, Fries teaches a contextual relationship at Column 7, Lines 40-47.

Applicant also argues that Tomsen does not suggest that the user is presented with a selectable option to store the promotion type on a user-defined storage device. The Examiner respectfully disagrees.

Figures 5-9 teach presenting a selectable option to store the shoe commercial on a user-defined storage device (**further note Paragraphs 0040 and 0046**).

Applicant argues that Lawler does not suggest receiving broadcast audio and video content along with a promotional metadata file associated with the broadcast

audio and video content. Note the Examiner's rebuttal above for Fries and Lawler teaches these limitations.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

/Jason P Salce/

Primary Examiner, Art Unit 2421